



September 2009

Focus on FCC Fines

R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424

The Lord may giveth, but the FCC taketh away – In two separate cases this month, the FCC fined churches for installing transmission facilities that didn't match up with the specifications in their FCC-issued authorizations. Perhaps more importantly, the FCC fined the churches for filing applications expressly stating that the station facilities as installed were, in fact, those specified in the underlying CPs. The lesson for all broadcasters is to verify that your stations are properly constructed *before* telling the FCC that that is the case.

A California church received a permit to construct an FM translator with its antenna on an existing 60-foot tower at a site where a number of towers were located. The church hired a contractor to install the transmission system. The contractor went to the site, installed the gear, took pictures of the completed project and told the church that the job was done. The church then filed an application for a covering license, telling the FCC that the station was properly up and running.

“Not so fast”, said a complainant who reached out to the FCC, telling it that the Church's contractor had hung the antenna on the wrong tower. Within a few weeks of the construction, the FCC had rescinded the license.

It turns out that the contractor went to the site and looked for the 60-foot tower specified in the permit. The contractor couldn't find a 60-foot tower, figured there must have been a mistake, and instead proceeded to install the antenna on a nearby 30-foot cell phone tower. The contractor snapped a few photos, verified with local residents that they were picking up the signal and reported back to the church that the mission was accomplished.

Unfortunately, this is not one of those few situations in which “close enough” is an accepted standard. Construction permits set out very detailed specifications that must be met to the letter. Those specs include the geographic coordinates of the tower to be used, as well as the height on the tower at which the antenna is to be placed. In this case, the facilities as installed missed on both of those counts.

And when the permittee went ahead and filed its license application, it seriously compounded its problems by telling the FCC that the station's facilities did indeed

conform to the CP specs. In the FCC's view, that amounted to false certification – the equivalent of lying to the agency – which can be a far more grievous sin than unauthorized construction caused by a good faith, inadvertent mistake. The government fined the church \$5,000.

A Pennsylvania church was also hit with a \$5,000 fine for failing to operate its directional AM station as authorized and failing to maintain a complete public file. The problems involved a veritable cornucopia of violations, including over-power operation and use of an unauthorized STL frequency.

But what really caught the FCC agent's eye were the station's towers. Or, more accurately, the station's tower. While the station was licensed to operate directionally from a two-tower array, the FCC inspectors found only a single tower throwing out a non-directional signal. Oh yeah, they also noticed the remnants of a second tower. The station readily admitted to the FCC agent that, six months earlier, both towers had been damaged, which led them simply to dismantle one of them and use the remaining one – even though that solution meant that the station was operating non-directionally and over-power. The church neglected to pass the word of its self-help solution along to the FCC; nor did it ask for Commission authorization (with, say, a mod application, or even a request for STA) to cover the modified set-up. Although the FCC initially proposed a \$15,000 fine, the church found charity in the government and the fine was lowered to \$5,000 because of the church's limited financial resources.

The preceding announcement was only a test, but it was brought to you by . . . – While there is no sponsorship of EAS tests, a mix-up at a Southern California station made it sound that way. The station in Orange County was a Local Primary station designated to broadcast alerts and serve as an emergency alert trigger for other stations in several nearby counties. Of course, the EAS system involves weekly and monthly tests alerts broadcast by such Local Primary stations.

It seems that last October an “operator error” resulted in the Orange County station running a required monthly test in place of the standard weekly test. While this may have otherwise gone unnoticed by the public, the operator committed another error. At the conclusion of any EAS test, the Local Primary station is required to transmit an “end of message” code and an explanation that this was only a test. That code and explanation let all other stations know that they may return to their own regular programming. In this case, though, the operator forgot to include the “end of message” code or the explanation. Instead, the Local Primary station returned to its own regularly scheduled programming and advertisements. Some of the downstream stations, having heard no end of message code, continued to retransmit the signal from the Local Primary station, including its regular programming and advertisements.

The FCC determined that this was not an intentional effort by the station to broadcast its programming and advertisements from every radio station in the area. However, the FCC did fault the station for not sending the end of message code and explanation. As a result, the station now faces a \$5,000 fine.